

Shaykh Sulaymān Al ‘Alwān was asked, “Applying the hudūd in the ard (land) of harb (war), is it narrated from the Prophet sall Allāhu ‘alayhi wa sallam? What is the hukm?”

The Shaykh (حفظه الله) responded by saying: Firstly, there is no difference among the scholars, may Allah (جل وعلا) have mercy upon them on the obligation of establishing the hudūd (punishments), and that it is not permissible to deny and leave it off completely, and everything that goes against this fundamental rule returns back to this fundamental rule and the differed upon returns back to the agreed upon to remove the confusion/doubts.

Secondly, the Imam Abu ‘Eesa al-Tirmidhī (رحمه الله) researched this matter in his book al-Jāmi’ (kitāb al-hudūd) and he mentioned from some of the scholars that the hudūd (punishments) aren’t apply in the Battle, and this was said by a group among the scholars, and it’s understood from some of the later scholars from this that the punishment is removed in its entirety, and that whoever steals from the land of war or fornicates, then the punishment is removed from him and this is wrong, and what was intended by whoever said that the punishment isn’t applied, means that it is delayed so that it doesn’t cause the muslim (usually the new muslim) to join the land of the enemy, so he changes his religion from Islām to Kufr (disbelief), and with respect to this cause of harm, it would be appointed [chosen by the Imām] to delay the punishment and this is what is meant by the statement of who said: “that the punishments aren’t applied in the land of war”.

And as for the statement that **the punishment falls (is removed) completely, then this is wrong and it’s not permissible to say this!!!** And with that (being said), establishing the punishments in the land of war is differed upon, and that is upon two sayings:

The first saying: A group of scholars went to say that the punishments are to be applied whatsoever, and there’s no difference between the land of war or other than that, or the land of battle or other than that.

And the second saying: What is to be put forward is weighing between the benefit and repelling the evil [The Maslahah], and because there is nothing in the Sharī’ah which prevents us from delaying the punishment, and the evidence has been reported on the impermissibility of leaving off the punishment and nothing has been reported about the impermissibility of delaying the punishments, there’s a difference between the two matters, so consequently, if the leader of the army or the leader of the battalion see’s a benefit in delaying the punishment then he delays it, and if he sees a benefit in hastening the punishment then he hastens it, and the scholars that are present have the ability to determine the benefit and what repels the harm, so whenever it would cause fear for this muslim and that he will soon hear that he will get his hand cut off or get stoned, he will [choose to] join the land of the enemy, so then the punishment is delayed, until the muslims return to their safety, and whenever this harm has been expelled, then the punishment would be applied on him in the land of the battle.”